BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BERTHA PEREZ	)	
Claimant	)	
	)	
VS.	)	Docket No. 1,017,799
	)	
HALLMARK CARDS, INC.	)	
Self-Insured Respondent	)	

ORDER

Claimant requests review of the March 10, 2006 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

The Administrative Law Judge (ALJ) found claimant failed to establish she sustained an accidental injury that arose out of and in the course of her employment. Specifically, he concluded that "[c]laimant has presented no credible evidence to establish either that her work was repetitive or strenuous. The Court finds Dr. Fevurly's opinion to be the most credible."[1] Thus, he denied her request for medical treatment to her right upper extremity.

The claimant requests review of this decision asserting the ALJ erred when he concluded that claimant's job was not repetitive and caused her bilateral shoulder complaints.

Respondent argues the ALJ's preliminary hearing Order should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

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[1] ALJ Order (Mar. 10, 2006).

This claim was the focus of an earlier preliminary hearing that was held on September 15, 2004. At that hearing, claimant alleged she was suffering from bilateral shoulder complaints which she attributed to her repetitive work activities as a webtron printing press operator, a job claimant had been doing for the last 8 years. This job requires claimant to gather, straighten and stack cards as they emerge from a printing machine. These cards are then placed in a box and when the box contains 2000 items, the box is then placed on a pallet. This part of claimant's job is done while standing on a platform and the production belt is at chest level for claimant who is 4 foot 11 inches tall. After stacking a completed box, claimant must then obtain another box and repeat the process. In order to limit reaching overhead for a new empty box, claimant would take down several boxes at a time. Claimant testified that she would stack anywhere from 216,000 and 324,000 cards per shift.

Claimant began to notice problems with her shoulders in January 2004.[2] She testified that when she reported to work, her symptoms were less than at the end of her shift. Then, in April 2004 she awoke and found she could not lift her left arm. She sought treatment and was diagnosed with a rotator cuff tear. She was treated by Dr. Vosburgh whose records indicate claimant reported performing repetitive lifting in her job. He opined that it was unlikely that the repetitive task of jogging cards and stacking them was the sole cause of claimant's tear, but he suspected the repetitive activity through an entire shift would exacerbate symptoms secondary to a preexisting rotator cuff tear. Dr. Vosburgh recommended surgery, but respondent refused to consider this procedure as a worker's compensation matter. In June 2004, just before her surgery, respondent advised claimant it was denying her claim. Claimant proceeded with her surgery and on September 15, 2004, a preliminary hearing was held.

Included within the evidence presented at that hearing was a videotape of another worker performing the same job as well as a written report authored by Dr. Chris Fevurly. Dr. Fevurly examined claimant just before her surgery with Dr. Vosburgh, and indicated that "[i]t is not clear if these job tasks place her at increased risk for development of the bilateral rotator cuff insufficiency/full thickness tears but these tears are likely degenerative (as opposed to traumatic) in nature. In other words, the tears are the likely natural consequence of living and aging, the job duties do not appear to place her at any higher risk for development of these tears as compared to any of the other activities of daily living."[3] He went on to agree that claimant should have the surgery suggested by Dr. Vosburgh.

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[2] P.H. Trans. (Sept. 15, 2004) at 12. Claimant initially testified that her pain began in January 2003 although she later stated that her complaints began in 2004.

[3] *Id.*, Resp. Ex. 1 at 4 (Jun. 15, 2004 Report at 3).

At the first preliminary hearing there was some suggestion by respondent that claimant had misled Dr. Vosburgh by telling him she did repetitive *overhead* work. Admittedly, claimant's testimony is that the bulk of her work is at chest level and is not overhead. This is confirmed by the videotape. The only activity that involves placing the arms overhead is the reaching for an empty box and placement of a full box on the pallet as the stack of boxes increases. Respondent contends that Dr. Vosburgh's opinion as to the repetitive nature of claimant's work is compromised given her mis-characterization of her work. The ALJ agreed with respondent's argument and denied claimant's request for benefits finding that she failed to establish that she sustained an accidental injury arising out of and in the course of her employment with respondent.

Thereafter, claimant was seen by Dr. Edward J. Prostic who concluded her work activities were the source of her bilateral shoulder complaints. He further recommended an MRI be performed and surgery offered to address the right shoulder complaints.

Claimant again sought a preliminary hearing and the matter was heard on March 8, 2006. After hearing briefly from the claimant, the ALJ considered the earlier testimony and medical exhibits as well as additional reports from Dr. Prostic and a follow-up report from Dr. Vosburgh. Dr. Vosburgh did not change his opinion and opined that claimant's work activities could exacerbate the symptoms "secondary" to a preexisting rotator cuff pathology. The ALJ denied claimant's request concluding there was "no credible evidence to establish either that her work was repetitive or strenuous."[4]

The Board has considered the evidence offered by the parties and concludes the ALJ's preliminary hearing Order should be reversed. There is no dispute that claimant has bilateral shoulder problems which did not result from an acute injury. Rather, the tears and her resulting complaints emerged over time. Claimant describes her symptoms as increasing over the course of her shift and she also describes a job that compels her to perform the same duties over and over again. It is uncontroverted that claimant must stack and straighten a significant number of cards during her shift. And while the individual weights she must lift are not large, when the box is filled to capacity with 2,000 cards, it must be moved and stacked on a pallet. Claimant testified that these boxes weigh 25 pounds each and that she must complete, on average, 3 pallets a day with 36 boxes on each pallet.

This Board Member finds claimant's job as a webtron operator to be repetitive in nature and as such, the ALJ's preliminary hearing Order is reversed. Claimant's job may not be the sole cause of her bilateral shoulder problems, but such is not required under the law. It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the

[4] ALJ Order (Mar. 10, 2006).

affliction.[5] The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition. In this instance, the undersigned finds that claimant's job activities did, at a minimum, aggravate her underlying bilateral shoulder pathology. Accordingly, claimant is entitled to benefits under the Workers Compensation Act.[6]

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated March 10, 2006, is reversed and claimant is granted medical treatment for her right shoulder complaints with Dr. Vosburgh.

IT IS SO ORDERED.

Dated this _____ day of April, 2006.

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BOARD MEMBER

c: Jack A. Kaplan, Attorney for Claimant
John D. Jurcyk, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[5] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[6] The ALJ found that claimant provided the notice required by K.S.A. 44-520 and that issue is not in dispute in this appeal.